

**706.302-71 Small disadvantaged businesses.**

(a) *Authority.* (1) Citation: Fiscal year 1993 Foreign Operations, Export Financing, and Related Programs Appropriations Act, sec. 563.

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.7002). In order to achieve this goal, AID is authorized to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.7002), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged, as the terms are defined in 726.7002.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.7004 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to an eligible organization is appropriate to meet the requirement in paragraph (a)(2) of this section; and

(3) After considering whether the acquisition can be made under the authority of section 8(a), award under section 8(a) is not practicable.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of

706.302-71 (b) and (c) have been complied with.

[56 FR 27208, June 13, 1991, as amended at 58 FR 8702, Feb. 17, 1993; 61 FR 51235, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51235, Oct. 1, 1996, section 706.302-71 was amended in subsection (a)(1) by removing "726.101" wherever it appeared and replacing it with "726.7002", and in subsection (b) is amended by removing "726.103" and replacing it with "726.7004", effective Oct. 31, 1996.

**706.303-1 Requirements.**

(a)-(c) [Reserved]

(d) AID project procurements are generally not subject to the Trade Agreements Acts of 1979 (see 725.403 of this chapter). To the extent procurements are made under the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 with Operating Expenses (OE) Funds, the Contracting Officer shall send a copy of the justification to the Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, ATTN: Director, International Procurement Policy.

[50 FR 16086, Apr. 24, 1985]

**Subpart 706.5—Competition Advocates****706.501 Requirement.**

The AID Administrator delegated the authority to designate the agency competition advocate and a competition advocate for each agency procuring activity (see 706.003 of this part) to the AID Procurement Executive. The AID Procurement Executive, under the Administrator's delegation, has designated the M/OP Deputy Director for Policy, Evaluation and Support as the Agency's competition advocate and the deputy head (or equivalent) of each contracting activity as the competition advocate for each activity. The competition advocate for M/OP is the Deputy Director for Operations. If there is no deputy or equivalent, the head of the contracting activity is designated the competition advocate for that activity. The competition advocate's duties may not be redelegated, but can be exercised by persons serving as acting deputy (or acting head) of the contracting activity. For definitions of

## 708.102-70

contracting activity and head of contracting activity, see 702.170-3 and 702.170-10, respectively.

[59 FR 33446, June 29, 1994]

### **PART 707—ACQUISITION PLANNING**

#### **Subpart 707.1—Acquisition Plans [Reserved]**

### **PART 708—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

#### **Subpart 708.1—Excess Personal Property**

##### **708.102-70 Policy.**

See AID Handbook 16, Excess Property.

[49 FR 13240, Apr. 3, 1984]

### **PART 709—CONTRACTOR QUALIFICATIONS**

#### **Subpart 709.4—Debarment, Suspension and Ineligibility**

Sec.  
709.402 Policy.

#### **Subpart 709.5—Organizational Conflicts of Interest**

709.503 Waiver.  
709.507-2 Contract clause.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

#### **Subpart 709.4—Debarment, Suspension and Ineligibility**

##### **709.402 Policy.**

The policies and procedures governing the debarment, suspension, and ineligibility of "government procurement" contractors and suppliers are set forth in the Federal Acquisition Regulation, 48 CFR subpart 9.4. For debarment and suspension of these government procurement contractors and

## 48 CFR Ch. 7 (10-1-96 Edition)

suppliers AID applies the procedures set forth in 22 CFR part 208, which is also AID's regulation for the debarment, suspension, and ineligibility of awardees of agreements other than government procurement contracts.

[52 FR 21058, June 4, 1987]

#### **Subpart 709.5—Organizational Conflicts of Interest**

##### **709.503 Waiver.**

For purposes of approving waivers or re delegating the authority to approve waivers pursuant to FAR 9.503, the A.I.D. Procurement Executive is the Agency head (see AIDR 702.170-13(c)(4). The Procurement Executive had re-delegated the authority to approve waivers pursuant to FAR 9.503 to the heads of contracting activities in A.I.D., as defined in AIDAR 702.170-10.

[54 FR 16122, Apr. 21, 1989]

##### **709.507-2 Contract clause.**

(a)-(b) [Reserved]

(c) In order to avoid problems from organizational conflicts of interest that may be discovered after award of a contract, the clause found at 752.209-71 should be inserted in all contracts whenever the solicitation includes one of the FAR organizational conflict of interest solicitation clauses, FAR 52.209-7 or 52.209-8.

[58 FR 42255, Aug. 9, 1993]

### **PART 711—DESCRIBING AGENCY NEEDS**

Sec.

711.002-71 Solicitation provisions and contract clauses.

711.022-70 Metric system waivers.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

##### **711.002-71 Solicitation provisions and contract clauses.**

The contracting officer shall insert the clause at 752.211-70 in all AID-direct solicitations and contracts.

[57 FR 23321, June 3, 1992. Redesignated and amended at 61 FR 39091, July 26, 1996]

**711.022-70 Metric system waivers.**

(a) *Criteria.* The FAR 11.002(b) requirement to use the metric system of measurement for specifications and quantitative data that are incorporated in or required by AID contracts may be waived when AID determines in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets.

(b) *Authorization.* (1) The AID Metric Executive (M/AS), the contracting officer, and the AID official who approves the procurement requirement are authorized to waive the metric requirement for one of the above reasons. The AID Metric Executive is authorized to overrule a decision to grant a waiver, or to nullify a blanket waiver made by another approving official so long as a contractor's rights under an executed contract are not infringed upon.

(2) A blanket waiver for a class of multiple transactions may be issued for a term not to exceed three years.

(3) When a waiver will be based upon the adverse impact on U.S. firms, clearance from the AID Metric Executive (M/AS) and the Office of Small and Disadvantaged Business Utilization (SDB) will be obtained prior to authorization.

(c) *Records and reporting.* (1) The basis for each waiver and any plans to adapt

similar requirements to metric specifications in future procurements should be documented in the contract file.

(2) Each procurement activity will maintain a log of the waivers from the metric requirements which are authorized for its procurements. The logs shall list the commodity/service being procured, total dollar value of the procured item(s), waiver date, authorizing official, basis for waiver, and AID actions that can promote metrication and lessen the need for future waivers.

(3) Within 30 days of the closing of each fiscal year, each AID/W procurement activity and each Mission will submit a copy of the metric waiver log for the year to the AID Metric Executive. (Mission logs are to be consolidated in a Mission report for the procurement activity and for the non-procurement activities maintaining such logs under the AID Metric Transition Plan.) Repetitive purchases of commercially produced and marketed items and classes of items may be consolidated in reporting procurements that do not exceed \$10,000 cumulatively during the reporting period.

[57 FR 23321, June 3, 1992, as amended at 59 FR 33446, June 29, 1994. Redesignated and amended at 61 FR 39091, July 26, 1996]